

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. WHITSITT,
Plaintiff,
v.
CITY OF STOCKTON, et al.,
Defendants.

No. 2:20-cv-00131 KJM AC

FINDINGS AND RECOMMENDATIONS

This matter is before the court on plaintiff's motion to reopen this case under Federal Rule of Civil Procedure 60. ECF No. 17. Plaintiff is proceeding pro se, and accordingly the motion was referred to the undersigned pursuant to Local Rule 302(c)(21). For the reasons that follow, the motion should be DENIED.

I. RELEVANT FACTUAL AND PROCEDURAL HISTORY

Plaintiff filed his complaint on January 17, 2020 and moved to proceed in forma pauperis. ECF Nos. 1, 2. Pursuant to the IFP screening process, the initial complaint was rejected with leave to amend. Id. Plaintiff submitted a First Amended Complaint ("FAC") on April 20, 2020. ECF No. 7. Plaintiff subsequently submitted a motion to amend, asserting that he had submitted the FAC before receiving the order to amend his complaint. ECF No. 8. The motion was granted. ECF No. 9. The Second Amended Complaint ("SAC") was rejected on screening for

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1 failure to state a claim, and the case was closed. ECF Nos. 12, 15, 16. On July 16, 2021, plaintiff
2 moved to reopen this case. ECF No. 17.

3 II. STANDARDS

4 Rule 60(b) of the Federal Rules of Civil Procedure provides for reconsideration of a final
5 judgment or any order where one of more of the following is shown: (1) mistake, inadvertence,
6 surprise, or excusable neglect; (2) newly discovered evidence which, with reasonable diligence,
7 could not have been discovered within twenty-eight days of entry of judgment; (3) fraud,
8 misrepresentation, or misconduct of an opposing party; (4) voiding of the judgment; (5)
9 satisfaction of the judgment; and (6) any other reason justifying relief. Fed. R. Civ. P. 60(b). A
10 motion for reconsideration on any of these grounds must be brought within a reasonable time, and
11 no later than one year, of the entry of the judgment or the order being challenged. Id. “Motions
12 for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure are
13 addressed to the sound discretion of the district court...” Allmerica Financial Life Insurance and
14 Annunity Company v. Llewellyn, 139 F.3d 664, 665 (9th Cir. 1997).

15 III. ANALYSIS

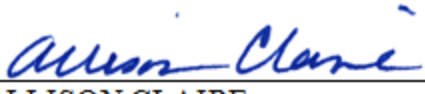
16 Plaintiff’s motion argues that this case was not duplicative of another case he filed which
17 was dismissed for being duplicative. ECF No. 17 at 2. The present case was not dismissed for
18 being duplicative, so that argument is irrelevant. Plaintiff asks whether the court has a mole on its
19 staff. Id. Plaintiff is assured that there is no mole on the staff. Plaintiff does not present any
20 basis for reopening this case.

21 IV. CONCLUSION

22 It is HEREBY RECOMMENDED that plaintiff’s motion (ECF No. 17) be DENIED.
23 These findings and recommendations are submitted to the United States District Judge assigned to
24 the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being
25 served with these findings and recommendations, any party may file written objections with the
26 court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a document should be
27 captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to
28 the objections shall be filed with the court and served on all parties within fourteen days after

1 service of the objections. Local Rule 304(d). Failure to file objections within the specified time
2 may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455
3 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

4 DATED: July 19, 2021

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE
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